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No. 83-190

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1983

ABATTI FARMS, INC. and
ABATTI PRODUCE, INC.

Petitioners,

v.

AGRICULTURAL LABOR RELATIONS BOARD and
UNITED FARM WORKERS, AFL-CIO,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF IN OPPOSITION OF RESPONDENT AGRICULTURAL LABOR RELATIONS BOARD

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QUESTION PRESENTED

Whether in the absence of any claim that the procedures before the Agricultural Labor Relations Board were constitutionally deficient, petitioner raises a substantial federal question by objecting only to the state procedure which permitted the California Court of Appeal to dispose of Abatti's petition for review of the Board's decision without opinion?

STATEMENT OF THE CASE

Petitioners Abatti Farms, Inc. and Abatti Produce, Inc. (hereinafter, "Abatti") are California corporations and are agricultural employers subject to the jurisdiction of the Agricultural Labor Relations Board ("ALRB" or "Board"). The United Farm Workers of America, AFL-CIO ("UFW") was duly certified by the ALRB as collective bargaining representative of Abatti's agricultural employees. Subsequent to such certification, on June 7, 1978, Abatti and the UFW entered into a collection bargaining agreement. (Pet. App. A, p. 5.)[1] About six months later, on December 27, 1978, an election was held to decertify the UFW as the collective bargaining representative. (*Ibid.*)

Based upon unfair labor practice charges filed by the UFW, the Board's General Counsel issued an administrative complaint alleging, in substance, that Abatti had instigated, supported, and assisted the decertification campaign; had discriminated against certain employees because of their support for the UFW; had unilaterally discontinued a rapini crop without bargaining over the decision; and had refused to bargain with the UFW. Following an extensive hearing, an administrative law judge (ALJ) issued his recommended decision. After considering the ALJ's report and Abatti's exceptions thereto, the Board issued its Decision and Order. (7 ALRB No. 36; Pet. App. A.)

In substance, the Board found that there was insuffi-

[1] Reference is to petitioner's Appendix.

cient evidence to support a conclusion that Abatti had instigated the decertification petition, but found that ample evidence supported the General Counsel's allegation that Abatti supported and assisted the decertification effort. The Board also found that Abatti had unlawfully laid off two employees because of their support for the UFW, and had laid off four others as a disguise for the layoff of the union supporters. Without reaching the general question of an employer's obligation to bargain over economically-motivated crop decisions, the Board found that Abatti had unlawfully discontinued the rapini crop as insurance against a possible strike without having grounds to believe a strike was imminent. In light of its finding that Abatti had supported and assisted the decertification campaign, the Board concluded that Abatti's refusals to bargain with the union subsequent to the decertification election were unlawful.

The Board ordered Abatti to reinstate and compensate the wrongfully laid-off employees. Abatti was also ordered to make whole affected employees "for all losses of pay or other economic losses they may have incurred as a result of [Abatti's] refusal to bargain." (Pet. App. A, p. 14.)[2]

The Board's decision issued on October 28, 1981, and, in accordance with the time limitations of California

[2] Determination of the number of employees involved and the amount of compensation due under the order is deferred to a subsequent administrative proceeding. (See, *J. R. Norton Co.* v. *Agricultural Labor Relations Bd.*, 26 Cal.3d 1, 11 (1979).

Labor Code section 1160.8, Abatti filed a petition for writ of review in the State Court of Appeal within 30 days thereafter. Some seventeen months later, on March 2, 1983, the California Court of Appeal for the Fourth Appellate District summarily denied the petition.[3] On May 4, 1983, the Supreme Court denied Abatti's petition for hearing. (Pet. App. E.)

ARGUMENT

Petitioner here challenges the procedure of the State of California which provides for judicial review of the decisions of the Agricultural Labor Relations Board—and other quasi-judicial administrative tribunals—by writ of review. Petitioner's contention is that the procedure denied Abatti due process because it permitted the Court of Appeal to summarily dispose of the petition for writ of review, i.e., without a written opinion. Petitioner does not here argue that the administrative procedures themselves were in any way constitutionally deficient; nor did petitioner present any such issue to the California Court of Appeal or to the California Supreme Court.

As respondent will demonstrate, summary disposition of petitions to review decisions of administrative tribunals has long been recognized as an acceptable judicial procedure. Moreover, the law is clear that summary disposition of a petition to review the administrative deci-

[3] The petition omits all references to the date of summary denial, and petitioner's printed appendix (Pet. App. C) does not disclose the date on which the order of summary denial was filed. The date is a fact of which this Court can take judicial notice (F.R. Evid. 201), and respondent asks that the Court do so.

sion does not deny due process, where, as here, the constitutional sufficiency of the administrative procedures is assumed.

I

THIS COURT HAS RECENTLY RULED THAT DUE PROCESS IS NOT OFFENDED BY A STATE PROCEDURE WHICH PERMITS SUMMARY DISPOSITION OF JUDICIAL PROCEEDINGS TO REVIEW THE DECISIONS OF ADMINISTRATIVE TRIBUNALS, SO LONG AS DUE PROCESS IS PROVIDED IN THE ADMINISTRATIVE PROCEEDINGS THEMSELVES.

In *Kremer* v. *Chemical Construction Co.*, 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982), this Court considered the petitioner's objection that the judgment of a New York court should not be given res judicata effect in a federal court proceeding under Title VII of the Civil Rights Act of 1964. Kremer had filed an employment discrimination claim with the Equal Employment Opportunity Commission. The claim was referred to the New York State Division of Human Rights (NYHRD), which rejected the claim as meritless. That decision was upheld on administrative appeal. Kremer then filed a petition with the Appellate Division of the New York Supreme Court to set aside the administrative determination, but the administrative decision was summarily affirmed by the Appellate Division—a decision on the merits. Thereafter, Kremer filed suit in federal court under Title VII. This Court concluded that the federal district court was required to give preclusive effect to

the state court's judgment affirming the decision of the administrative tribunal.

Kremer argued that the state judgment should not bar his federal court claim because the New York courts did not resolve the question whether Kremer had suffered discriminatory treatment and because the administrative and judicial procedures were inadequate. Similarly, petitioner Abatti argues here that the California procedures for judicial review were inadequate and did not do not constitute a determination of the issues raised in objection to the Board's decision and order.

The Court rejected Kremer's contention, noting that the decision of the New York court was necessarily a decision that the employment discrimination claim was meritless. In addition, the Court found that the administrative procedures provided ample due process and an adequate opportunity to litigate disputed issues of fact. The Court noted that "the administrative nature of the factfinding process is not dispositive." (456 U.S. 461, 484 n.26.)

Respondent contends that *Kremer* is dispositive of the issues raised by petitioner here. As will be demonstrated, the Agricultural Labor Relations Act (ALRA) affords parties ample due process and opportunity to litigate disputed issues of fact and law. As in *Kremer*, judgment of the California Courts of Appeal summarily denying petitions for review of ALRB orders are decisions on the merits. Accordingly, no substantial issue of due process is raised by petitioner.

II

THE AGRICULTURAL LABOR RELATIONS ACT AFFORDS THE PARTIES BEFORE THE BOARD AMPLE DUE PROCESS AND AN OPPORTUNITY TO LITIGATE DISPUTED ISSUES OF FACT.

Petitioner does not claim that the administrative procedures before the ALRB are constitutionally deficient; nor did petitioner raise any such claim to the Court of Appeal or to the California Supreme Court. (Pet. App. B, D). The issue is therefore not now before this Court. However, respondent will briefly describe those procedures in order that the Court may be satisfied that petitioner raises no substantial federal question by objecting to the procedural scheme for judicial review.

The constitutional adequacy of the administrative procedures provided by the ALRA came under judicial scrutiny by the California Supreme Court in *Tex-Cal Land Management, Inc.* v. *Agricultural Labor Relations Bd.*, 24 Cal.3d 335, 595 P.2d 579 (1978).

The precise issue before the court was whether the Legislature could give preclusive effect to the factual findings of an administrative agency if that agency had not been expressly granted powers as a court. Strictly speaking, then, the issue was one of separation of powers.

Nevertheless, in deciding the question, the State Supreme Court considered the nature of the administrative procedures, and concluded that "the Legislature may accord finality to the findings of a statewide agency

that are supported by substantial evidence on the record considered as a whole and are made under safeguards equivalent to those provided by the ALRA for unfair labor practice proceedings, whether or not the California Constitution provides for that agency's exercising 'judicial power.' " (*Tex-Cal Land Management, supra,* 24 Cal.3d 335, 346.) This analysis has been confirmed by this Court's observation that "the administrative nature of the factfinding process is not dispositive . . . . So long as opposing parties had an adequate opportunity to litigate disputed issues of fact, res judicata is properly applied to decisions of an administrative agency acting in a 'judicial capacity.' " (*Kremer* v. *Chemical Construction Corp., supra,* 456 U.S. 461, 484 n.26, citing *United States* v. *Utah Construction & Mining Co.* 384 U.S. 394, 422 (1966).)

The California Supreme Court had found that the ALRA "generally assures the essentials of due process" (*Tex-Cal Land Management, supra,* 24 Cal.3d at 344), and that it "incorporates procedural safeguards of the [National Labor Relations Act]." (*Id.,* at 345.) Indeed, the administrative procedures provided by the ALRA are vitually *identical* to those provided by the NLRA. Thus, the ALRA provides for issuance of a formal administrative complaint; it contains a statute of limitations; it provides for the right to file an answer, and to appear in person or otherwise and give testimony; and it provides that the rules of evidence—including the right of cross-examination—shall govern. All proceedings are reported. (Cal.Lab. Code, section 1160.2, *Cf.* 29

U.S.C. section 160(b).) The testimony of the proceedings is reduced to writing, and the Board is required to state its findings. (Cal.Lab. Code, section 1160.3, *Cf.* 29 U.S. section 160(c).) The parties are expressly afforded an opportunity to except to any recommended decision of a hearing officer (*Ibid.*), and they have the right to subpoena witnesses. (Cal.Lab. Code, section 1151; *Cf.* 29 U.S.C., section 161.) Parties are expressly permitted to appear by counsel (Cal.Lab. Code, sec. 1151.3; *Cf.* 29 U.S.C. sec. 160(b)), and to petition for judicial review. Cal.Lab. Code, section 1160.8; *Cf.* 29 U.S.C., section 160(f).

The procedures provided under the ALRA are certainly as solicitous of due process guarantees as were those provided by the New York statutes in *Kremer*. This being the case, it does not offend due process for California to provide that petitions for review of ALRB decisions may be disposed of summarily.

III

SUMMARY DISPOSITION OF A PETITION FOR REVIEW OF A DECISION OF THE ALRB IS A RULING ON THE MERITS.

Petitioner argues that the California procedure "has taken away Abatti's right to have a court determine the legality and fairness of the ALRB action." (Petition, p. 8.) But this mischaracterizes the state procedure.

What California has done is provide that reviewing courts are to give preclusive effect to findings of the ALRA inasmuch as the administrative, quasi-judicial [4]

[4] The California Supreme Court did not decide whether, in fact, the

procedures provide adequate due process safeguards. Judicial review is certainly available, but it is not and need not be *de novo* review.

Moreover, the judicial review which is provided results in a decision *on the merits*, even if the case is disposed of in "summary" fashion. Thus, while the California Supreme Court has confirmed the statutory test that findings of the Board with respect to questions of fact are conclusive if supported by substantial evidence (*Tex-Cal Land Management, Inc.* v. *Agricultural Labor Relations Bd., supra*, 24 Cal.3d 335, 343–346), the Court has nevertheless made clear that "the test of substantiality must be measured on the basis of the entire record, rather than by simply isolating evidence which supports the board and ignoring other relevant facts of record which rebut or explain that evidence." (*Martori Brothers Distributors* v. *Agricultural Labor Relations Bd.*, 29 Cal.3d 721, 727, 631 P.2d 60 (1981), quoting from *Garza* v. *Workmen's Comp. App. Bd.*, 3 Cal.3d 312, 317, 475 P.2d 451 (1970).) And the State Supreme Court has directed that, where reviewing courts find administra-

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Legislature had granted judicial powers to the ALRB pursuant to a provision of the California Constitution, concluding that the analysis turned more appropriately upon the nature of the fact-finding procedures rather that the particular label given to the tribunal. Earlier, an intermediate appellate court had concluded that judicial power is in fact conferred on the Board. (*Perry Farms, Inc.* v. *Agricultural Labor Relations Bd.*, 86 Cal.App.3d 448, 460–462, 150 Cal.Rptr. 495 (1978).) The Supreme Court has since indicated that its *Tex-Cal Land Management* decision did not necessarily overrule the conclusion of the Court of Appeal in *Perry Farms*. (See *Pacific Legal Foundation* v. *Brown*, 29 Cal.3d 168, 197 n.19, 624 P.2d 1215 (1981).)

tive rules which alter or amend the statute or enlarge or impair its scope, "the courts not only may, but it is their obligation to strike down such regulations." (*J.R. Norton Co.* v. *Agricultural Labor Relations Bd.* 26 Cal.3d 1, 29, 603 P.2d 1306 (1979).)

The gravamen of petitioner's complaint appears to be that when the reviewing courts "summarily" deny a petition for review, i.e., affirm the decision of the Board without written opinion, the petitioning party has no way of knowing the precise reasoning for the affirmance. Indeed, counsel for petitioner made the following remarks in a proceeding before the United States District Court for the Southern District of California, wherein Abatti was seeking an injunction against enforcement of the Board's decision and order:

> [Counsel for the Board] says that it must be presumed that the Court of Appeal acted lawfully and that it must be presumed that the Court of Appeal fully and fairly considered Abatti's petition, and it is that presumption, your Honor, that lies at the heart of our constitutional objections. We have no opportunity to rebut that presumption. We don't know. We agree with [sic] [counsel for the Board]; we have no idea. We may have been accorded all the due process in the world. It could be that the justices on the Court of Appeal convened and had bench memos written and argued back and forth and finally came to the conclusion that every single thing the Board did was appropriate and proper and there's absolutely no basis to change the Board's order at all. That may have occurred, but we don't know. It's entirely possible also that the case stayed in the basement, that a clerk

> looked at the case and said, "Well, all they're saying is there wasn't substantial evidence, and we're not interested in substantial evidence cases." It's entirely possible that that occurred. We don't know, and, your Honor, we have no way of knowing.

(Richard A. Paul, Esq., for plaintiff Abatti Farms, Inc., in Abatti Farms, Inc. v. Agricultural Labor Relations Board, Civil Action No. 83-1111-E, United States District Court for the Southern District of California, Reporter's Transcript of Proceedings, Thursday, June 16, 1983, at pp. 23, 24.)

Of course, the same complaint could be raised about this Court's summary disposition of an appeal. While this Court may be required to adjudicate appeals, the Court is not obligated to grant each case plenary consideration and may summarily dismiss an appeal. Such a dismissal is, nevertheless, a decision on the merits. (See, *Hicks* v. *Miranda*, 422 U.S. 332, 343–345 (1975).) Indeed, it has evidently been the practice of the Court since 1902 to refuse to hear cases coming within its obligatory jurisdiction when the question raised was deemed wholly without merit. (Stern & Gressman, *Supreme Court Practice (5th ed.)*, Bureau of National Affairs (1978), p. 319; *Cf.* F.R.A.P. 34, 36.)

Likewise, the decision of a California Court of Appeal to summarily deny a petition for writ of review is nothing more than a decision not to grant plenary consideration to a case:

> Section 1160.8 does not command courts to entertain oral argument and write an opinion on every petition but declares simply that the court "shall have

> jurisdiction" to enforce, modify, or set aside the ALRB order. Because of the prevalent pattern of discretionary review and doubts whether article VI, section 10 [of the California Constitution] authorizes legislatively compelled plenary hearings on petitions for extraordinary relief, we construe section 1160.8 to allow summary denials in the court's sound discretion.
>
> Courts should not make that disposition, however, until after the petitioner has had reasonable time to file points and authorities in light of the record filed by the ALRB. Ordinarily in writ proceedings the petitioner has the burden of furnishing a sufficient record. [citations omitted.] By shifting that burden to the ALRB, section 1160.8 impliedly assures the petitioner an opportunity to present written arguments based on the board-certified record.

(*Tex-Cal Land Management, Inc., supra,* 24 Cal.3d at 351.) Thus, the State Supreme Court manifestly recognized that reviewing courts must consider the arguments raised by the petitioner, but concluded that plenary consideration need not be given every case.

In another context, the California Supreme Court has held that where the petition for review is the sole means of obtaining judicial review of the decision of an administrative tribunal, a summary denial of such a petition is a decision on the merits, although such a decision is given no precedential value. (*Consumers Lobby Against Monopolies* v. *Public Utilities Com.* 25 Cal.3d 891, 899-905, 603 P.2d 41 (1979); see also *Dash, Inc.* v. *Alcoholic Beverage Control Appeals Bd.,* 683 F.2d 1229, 1235 (9th Cir. 1982).) Precisely the same reasoning ap-

plies to summary disposition of a petition for review under Labor Code section 1160.8, and this was recognized by the California Supreme Court:

> [B]y summarily denying a petition the court declines to exercise further jurisdiction in the matter. Once the denial becomes final the case must be treated as one for which "the time for review has lapsed," opening the way for the ALRB to seek enforcement by the superior court under the last paragraph of section 1160.8 [citation to earlier footnotes] [5].

(*Tex-Cal Land Management, Inc., supra*, 24 Cal.3d at 352.)

Under the writ procedure provided by Labor Code section 1160.8, then, a petitioner is assured that all of its arguments will be considered. The petitioner is guaranteed a decision on the merits, but it is not guaranteed plenary consideration of its case.

In the instant matter, petitioner was obviously afforded a full and complete opportunity to brief any and all objections to the Board's decision and order. (Pet. App. B.) Nothing in the Constitution mandated the Court of Appeal to grant plenary consideration to Abatti's petition for review, and as would be the case with any court, it must be presumed that the Court of Appeal duly considered petitioner's arguments, since it was obligated by

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[5] The relevant language of the footnotes referred to by the court consists of the following: "If the time for review has lapsed, the board may apply to the *superior* court, which must enforce the order *without reviewing the merits* if it determines that the order was issued pursuant to established board procedures and there is a refusal to comply" (24 Cal.3d at 348 n.8; italics, the court's.)

law to do so. Abatti has received all the judicial review and due process to which it is entitled.

CONCLUSION

Inasmuch as petitioner raised no claim to the state courts that the administrative procedures before the Agricultural Labor Relations Board are insufficient to provide due process, petitioner presents no substantial federal question by objecting to the state procedure which permits disposition of petitions for review without plenary consideration. Accordingly, the petition for writ of certiorari should be denied.

DATED:

Respectfully submitted,

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